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Nos. 81-2245, 81-2276, and 82-38

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF NEVADA,
Petitioner,
v.
UNITED STATES OF AMERICA, *et al.*,
Respondents.
and
TRUCKEE-CARSON IRRIGATION DISTRICT,
Petitioner,
v.
UNITED STATES OF AMERICA and
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
Respondents.
and
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
Cross-Petitioner,
v.
TRUCKEE-CARSON IRRIGATION DISTRICT, *et al.*,
Cross-Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF AMICI CURIAE STATES OF ALABAMA, INDIANA, LOUISIANA, MISSISSIPPI, NEBRASKA AND OKLAHOMA IN SUPPORT OF PETITIONER STATE OF NEVADA

[List of endorsements on inside cover]

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QUESTION PRESENTED FOR REVIEW

Although the decision below addressed other questions, this brief is confined to the following issue:

Are water rights adjudicated by a federal court to the United States on behalf of parties or interests it represents in an all-inclusive quiet title litigation fixed inter se so as to provide res judicata protection to right holders in privity to a party appearing in such action?

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INTEREST OF AMICI STATES

The states named herein as *amici curiae* have an interest in preserving the finality of judgments, especially when they arise out of lawsuits initiated by the United States against rights claimed by a state and its political subdivisions and on which the state and its political subdivisions have relied in making major governmental decisions.

The action now pending before the Court was initiated by the United States in 1973 for the purpose of obtaining a new water right in the Truckee River in western Nevada for the benefit of the Pyramid Lake Paiute Indian Tribe (hereinafter referred to as Tribe). Prior to commencing this action, the United States had initiated in 1913 an all-inclusive water rights lawsuit in the case of *United States v. Orr Water Ditch Company*, Equity No. A-3 (D. Nev.), hereinafter referred to as the *Orr Ditch* proceeding.

Thirty-one years later in 1944, a final decree was entered in the *Orr Ditch* proceeding, which determined the relative rights of all party claimants in and to the waters of the Truckee River and its tributaries. Included in the rights decreed to the United States were water rights for the Tribe for use on the Pyramid Lake Indian Reservation and water rights for the benefit of a federal reclamation project now represented by the TRUCKEE-CARSON IRRIGATION DISTRICT (TCID). The *Orr-Ditch* decree was a general adjudication, instituted by the United States against all claimants to Truckee River water (including the rights of the State of Nevada and its political subdivisions), for the purpose of settling forever and enjoining all parties from "asserting or claiming any rights in or to the waters of the Truckee River or its tributaries, or the waters of any of the creeks or streams or other waters hereinbefore mentioned except the rights, specified, determined and allowed by this decree . . . ." *Orr Ditch* Final Decree, page 87, reproduced at page

145a of Nevada's Appendix to Petition for a Writ of Certiorari.

Amici states have an interest in seeing that all-inclusive adjudications filed by the United States against rights claimed by a state and its political subdivisions on which they have extensively relied in their governmental decision making be given binding effect, because of the policy considerations underlying the doctrine of res judicata. The solemnization of property rights in a final court decree should not be jeopardized whenever there is a change in policy by the federal government. This is especially important when the United States represents multiple interests in all-inclusive adjudications, such as the *Orr Ditch* proceeding. America's system of jurisprudence is based on the fundamental notion of stare decisis, assuring that established legal principles and court decisions can be relied upon by governmental institutions and citizens alike to order their affairs and protect officially recognized legal rights.

Res judicata plays a major role in giving substance to this basic tenet of American jurisprudence, particularly as it affects parties, their privies and others who have relied upon a binding final judgment of a court of law. Amici states therefore believe it is in their interests that the doctrine of res judicata be upheld in the circumstances of the case at bar to reaffirm the importance of this doctrine in assuring that the conclusive resolution of disputes remains a major purpose of our judicial system.

SUMMARY OF ARGUMENT

The res judicata effect of comprehensive quiet title decrees should not depend on technical pleading requirements. Adversity under the pleadings should not be a prerequisite to the application of res judicata in such cases, particularly when there has been public and private reliance on the finality and conclusiveness of the property rights decrees.

ARGUMENT

I. IN A COMPREHENSIVE ADJUDICATION INITIATED BY THE UNITED STATES IN WHICH IT REPRESENTS DIFFERENT PARTIES OR INTERESTS, THE DOCTRINE OF RES JUDICATA BARS ANY SUBSEQUENT ATTEMPT TO RELITIGATE A CAUSE OF ACTION DECIDED IN THE FINAL DECREE OF THE PRIOR PROCEEDING, REGARDLESS OF WHETHER THE PARTIES OR INTERESTS REPRESENTED BY THE UNITED STATES ARE SPECIFICALLY IDENTIFIED AS ADVERSE IN THE PLEADINGS.

A. The Ninth Circuit Court Of Appeals Correctly Identified The General Principles And Purposes Of The Doctrine Of Res Judicata That Control The Outcome In The Case At Bar.

As noted in the opinion of the Ninth Circuit Court of Appeals, the Cause of Action seeking a fishery water right contained in the Complaint filed in the suit at bar was included in the same claim asserted by the United States in the *Orr Ditch* proceeding—a general, all-inclusive water adjudication suit which had sought to determine all rights and claims to the waters of the Truckee River. See: 649 F.2d 1286, 1302; page 225a of Nevada's Appendix to Petition for a Writ of Certiorari. The United States Government could have chosen to seek an adjudication only for certain water uses in the original *Orr Ditch* proceeding, but it did not. Instead, it chose a comprehensive adjudication, placing in issue before the court all of the reserved water rights claimed on behalf of the Pyramid Lake Paiute Indian tribe as well as the TCID reclamation project. *Id.* See also, Finding of Fact No. 8, by the trial court, reproduced at page 185a of Nevada's Appendix to Petition for a Writ of Certiorari.

The policies served by the doctrine of res judicata, such as reliance on judicial decrees, elimination of expense to

parties, conservation of judicial resources, and minimization of the possibility of inconsistent results, are especially important when titles to real property are involved. It was stated by this Court long ago:

> "Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. Legislatures may alter or change their laws, without injury, as they affect the future only; but where courts vacillate and overrule their own decisions on the construction of statutes affecting the title to real property, their decisions are retrospective, and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to changes." *Minnesota Min. Co. v. National Min. Co.*, 3 Wall. 332, 334, 18 L.Ed 42 (1866); *United States v. Title Insurance & Trust Co.*, 265 U.S. 472, 486-87, 44 S. Ct. 621, 623, 68 L.Ed. 1110 (1924).

Furthermore, this Court has recognized that finality in water adjudications cannot be attained when reserved rights remain unsettled. *United States v. New Mexico*, 438 U.S. 696, 98 S. Ct. 3012, 57 L.Ed.2d 1052 (1978); *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 810-11, 96 S. Ct. 1236, 1242-43, 47 L.Ed.2d 483 (1976).

Accordingly, Amici states contend that the Ninth Circuit's decision has correctly identified the general principles and purposes of res judicata that should control the outcome in this case. As noted by this Court in *Montana v. United States*, 440 U.S. 147 99 S. Ct. 970, 59 L.Ed.2d 210 (1979):

> "Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. [citations

omitted.] Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. [citations omitted.] *Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdiction.*" (Emphasis supplied) *Id.* at 153.

When a party, such as the United States, has had a full and fair opportunity to litigate all claims in a comprehensive water rights adjudication, its adversaries and those in privity with the parties to the suit ought to be protected from the expense and vexation attending multiple lawsuits, thereby conserving judicial resources and fostering reliance on judicial action by minimizing the possibility of inconsistent decisions. *Montana v. United States*, supra., at 153-154.

B. The Elements Of Res Judicata Have Been Established In This Case So As To Bar Any Further Litigation Of Claims Made By The United States To Truckee River Water On Behalf Of Entities Or Interests It Represented In the *Orr Ditch* Proceeding.

Certainly, as to the United States, and the interests it represented, it had a full and thorough opportunity to litigate all rights and claims it had to the waters of the Truckee River in the *Orr Ditch* proceeding. By filing a general all-inclusive water right adjudication suit, the United States was provided with ample opportunity to assert whatever claims it felt were necessary in line with policy decisions made at that time to satisfy the diverse and competing interests of the entities or interests represented by the United States.

The amended complaint filed by the United States in *Orr Ditch* amply demonstrates that a comprehensive determination of the relative property rights of all in-

terested parties was the primary thrust of this proceeding. In the prayer for relief, the United States asked for the following:

> "Second. That the court by its decree determine the relative rights of the parties hereto in and to the waters of the said river and its tributaries in Nevada, both natural flow and flood waters, to the end that it may be known how much of said waters may be diverted from said river by the parties hereto and for what purposes, where, by what means of diversion, and with what priorities." *United States v. Orr Ditch Water Co., et al.*, Equity A-3 (D. Nev.), reproduced at page 10a of Nevada's Appendix to Petition for a Writ of Certiorari.

The stated purpose and nature of the United States' *Orr Ditch* cause of action was provided in paragraph 18 of the amended complaint, which alleged:

> "Until the several rights of the various claimants, parties hereto, including the United States, to the use of the waters flowing in said river and its said tributaries in Nevada or used in Nevada have been settled, and the extent, nature, and order in time of each right to divert said waters from said river and its tributaries has been judicially determined, the United States cannot properly protect its rights in and to the said waters, and to protect said rights otherwise than as herein sought if they could be so protected would necessitate a multiplicity of suits." *Id.*

Virtually the same cause of action is stated in the Complaint filed by the United States on December 21, 1973, which initiated the case at bar. The pertinent language is found in Paragraphs I and II as follows:

> "I
>
> "This is a civil action in which *the United States, in its own right and in its fiduciary capacity on behalf of the Pyramid Lake Paiute Tribe of Indians*

seeks to have its own rights and the rights of the Pyramid Lake Paiute Tribe of Indians in and to the waters of the Truckee River and all waters in the State of Nevada tributary thereto determined and declared. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1345.

"II

"On information and belief it is alleged that the majority of the defendants named in this action are the present owners or claimants to the rights to the use of waters of the Truckee River that were decreed in the case entitled *United States v. Orr Water Ditch Co., et al.*, Equity No. A-3, in this Court. In that action, *some but not all of the rights to the use of the waters of the Truckee River were decreed.* The United States does not dispute the rights decreed in that action. The defendants are made parties to this action because *the relief sought by the United States would establish additional rights of the United States and the Pyramid Lake Paiute Indians to the use of the waters of the Truckee River and waters tributary thereto.* Many of these additional rights of the United States would carry priority dates earlier than many of the rights decreed in the *Orr Water Ditch* Decree. . . ." (Emphasis supplied). Reproduced at page 151a of Nevada's Appendix to Petition for a Writ of Certiorari.

Once the *Orr Ditch* proceeding resulted in a final decree on the cause of action stated therein, the principles of res judicata should be applied in sustaining the conclusive resolution of that dispute.

Traditionally, only actual parties or those in formal privity with actual parties to a prior action could be bound by a prior judgment. Also, a rule of mutuality of estoppel was imposed, meaning that one party to a judgment could be bound in subsequent suits only if the other party would have been bound similarly by a

different result. Strict mutuality required identity of the parties or privity between the parties in the two suits. The purpose of the mutuality rule was to assure each litigant his day in court. However, experience showed that exceptions to the overly strict privity and mutuality of estoppel rules were warranted, a trend in part begun in Justice Traynor's opinion in the California Supreme Court decision of *Bernhard v. Bank of America Nat'l Trust & Savings Ass'n*, 122 P.2d 892 (1942).

The defensive use of res judicata, without the requirement of mutuality, was conclusively established in the federal courts in *Blonder-Tongue Laboratories v. University of Illinois Foundation, et al.*, 402 U.S. 313 (1971). In *Sea-Land Services Inc. v. Gaudet*, 414 U.S. 573 (1974), this Court applied the collateral estoppel bar to non-parties who had been represented by a fiduciary in the prior action. In *Parklane Hosiery Co., Inc., et al. v. Shore*, 439 U.S. 322 (1979) this Court held that even the "offensive" use of collateral estoppel was permissible.

This broadening of the res judicata/collateral estoppel doctrines has developed to carry out the salutary purpose, as expressed by this Court in the *Montana* case, of:

> ". . . preclud(ing) parties from contesting matters that they have had a full and fair opportunity to litigate . . . (and) protect(ing) their adversaries from the expense and vexation attending multiple lawsuits, conserv(ing) judicial resources, and foster (ing) reliance on judicial action by minimizing the possibility of inconsistent decisions." 440 U.S. at 153-154 (footnote deleted)

Accordingly, amici states believe the elements of res judicata have been met in this case, warranting the dismissal of the action by the trial court below.

C. The Ninth Circuit's Decision Incorrectly Ruled That The *Orr Ditch* Decree Did Not Provide Res Judicata Protection For All Parties Or Interests Represented by The United States in the *Orr Ditch* Proceeding Based On A Requirement Of "Adversity On The Pleadings."

As to the TRUCKEE-CARSON IRRIGATION DISTRICT, the Ninth Circuit Court of Appeals held that this entity was not entitled to assert the defense of res judicata on the grounds that there was no adversity under the pleadings as between the Tribe and the Reclamation Project represented by the TRUCKEE-CARSON IRRIGATION DISTRICT.

This requirement of "adversity on the pleadings" is at odds with the recent decisions of this Court, and it also conflicts with other circuit court decisions holding that parties who were not formally adverse on the pleadings could be barred in later litigation between themselves. See: *Scooper Dooper, Inc. v. Kraftco Corp.*, 494 F.2d 840 (3d Cir. 1974), *Oldham v. Pritchett*, 599 F.2d 274, 278 (8th Cir., 1979) *Diamond Shamrock Corp. v. Lumbermans Mut. Cas. Co.*, 416 F.2d 707 (7th Cir. 1969); *Livesay Industries, Inc. et al. v. Livesay Window Co. Inc.*, 202 F.2d 378 (5th Cir. 1953); *Nat'l Bonholders Corp. v. Seaboard C. Nat'l Bank*, 110 F.2d 138 (4th Cir. 1940).

Amici states would note that a requirement such as formal adversity on the pleadings is particularly inappropriate in a general water adjudication. As noted in the dissenting opinion in the Ninth Circuit below, an "all inclusive" water adjudication suit is deemed under western water law as a suit in which all claims for water are deemed adverse to each other regardless of whether or not they are denominated plaintiffs or defendants in the pleadings. See generally: *Morgan v. Udy*, 58 Idaho 670, 681, 79 P.2d, 295, 299 (1938), citing *Frost v. Alturas Water Company*, 11 Idaho 294, 301, 81 P. 996,

998; and *Pacific Livestock Company v. Ellison Ranching Company*, Nev. 279 at 296, 286 P 120 at 123 (1930).

Accordingly, once water rights are determined in an all inclusive proceeding, the resulting final judgment bars any further cause of action by any party or a privy to such a party based on a claim for new water rights. Such a result is essential to maintain the integrity of the final judgment of the first proceeding—a conclusive resolution of the dispute over all the water rights that were or could have been put in issue.

The Ninth Circuit's decision undermines this central purpose of the res judicata doctrine in a general water rights adjudication.

In conclusion Amici states urge this Court to affirm the general principles and purposes of the res judicata doctrine, so that all parties or entities represented in an all inclusive adjudication, such as the *Orr Ditch* proceeding, are entitled to protection against any subsequent attempt to relitigate a cause of action fully and fairly decided.

II. THE DOCTRINE OF RES JUDICATA SHOULD BE STRICTLY APPLIED AGAINST THE UNITED STATES UNDER THE FACTS AT BAR BECAUSE OF THE RELIANCE PLACED ON THE *ORR DITCH* FINAL DECREE BY THE STATE OF NEVADA, ITS POLITICAL SUBDIVISIONS, AND THOUSANDS OF WATER USERS, AS WELL AS THE INTERESTS OF SOUND POLICY IN JUDICIAL ADMINISTRATION.

The Ninth Circuit determined that the United States and the Pyramid Lake Paiute Indian Tribe were not precluded from asserting additional water rights on behalf of the Tribe against the other interests represented by the United States in the *Orr Ditch* proceeding, to-wit the TCID reclamation project water rights, notwithstanding the 1944 *Orr Ditch* final decree. Furthermore, the Tribe, as a Cross-Petitioner herein, contends that its new

water right claim should upset and supercede the long-relied upon decreed water rights of all the other Truckee River water users, despite the reliance on the *Orr Ditch* final decree by the defendants in *Orr Ditch*, their successors in interest, and all other persons, firms, governmental units, etc. See: page 189a, Nevada Appendix to Petition for Writ of Certiorari, Record on Appeal, pp. 4205-06. If established, the new water rights would be given a priority over all the other decreed water rights contained in the *Orr Ditch* decree. See: Page 9, Tribe's Cross-Petition for Writ of Certiorari. In this connection, the United States and the Tribe have failed to prove that no harm would be sustained if such a result occurred. See: page 191a, Nevada's Appendix to Petition for a Writ of Certiorari.

Should the Cross-Petitioner (Tribe) and United States prevail in their claims for relief, the property rights of the innocent parties to the *Orr Ditch* proceeding and those who have relied upon the *Orr Ditch* final decree would be unfairly and adversely affected. Amici states urge this Court to consider the impact of upsetting a decree on which thousands of people are dependent in regulating the diversion of Truckee River water for the many beneficial uses on which a large population center is dependent. It is reasonable to assume that many governmental decisions have been made by the State of Nevada and its political subdivisions, based on the finality of the *Orr Ditch* decree.

Under these circumstances, amici states contend that the doctrine of res judicata should be strictly construed against the United States to assure finality in the litigation commenced by the federal government nearly 70 years ago and to avoid jeopardizing vested property rights established in the final *Orr Ditch* decree over 38 years ago.

Despite the all inclusive nature of the action which led to the *Orr Ditch* decree, the Ninth Circuit has deter-

mined that the United States and the Paiute Indian Tribe are not precluded by the decree from disturbing the property rights adjudicated therein and asserting additional water rights on behalf of the Indians. The decision thereby negates the purpose of the decree and jeopardizes the finalized water rights of hundreds of water right holders in the TRUCKEE-CARSON IRRIGATION DISTRICT who have detrimentally relied for several years on the finality of the decree. The decision further runs contrary to the interests of sound public policy in assuring finality with regard to adjudicated property rights and of bringing certainty to the water right claims of the federal government when it files suit to quantify the amount of water it has retained under the reservation doctrine. The disruption of property rights which have been settled pursuant to a court decree entered in a comprehensive general adjudication is not in the interests of sound policy in judicial administration.

CONCLUSION

Amici states urge this court to apply the general principles and purposes of the res judicata doctrine in the case at bar and to uphold the finality of the *Orr Ditch* decree. This doctrine is particularly appropriate in cases affecting titles to real property. The United States had a full and fair opportunity to litigate all claims it had to Truckee River water on behalf of the various interests it represented in the *Orr Ditch* proceeding, including those of the Pyramid Lake Indian Tribe. To undermine the finality of that decree would jeopardize the rights of the State of Nevada, its political subdivisions, and thousands of water users, who have substantially relied on the *Orr Ditch* decree to make major governmental decisions and develop additional valuable property rights.

The elements of res judicata have been met in this case, and the Court below should not have applied a strict "adversity on the pleadings" rule in the context of a gen-

eral, all-inclusive water adjudication suit. Accordingly, amici states urge a reversal of the Ninth Circuit decision below and a reinstatement of the trial court's dismissal, based on the doctrine of res judicata.

Respectfully submitted,

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